APPENDIX

APPENDIX A

No.

IN THE
UNITED STATES Supreme Court

FRANK KONARSKI AND GABRIELA KONARSKI, HUSBAND AND WIFE; PATRICIA KONARSKI, A SINGLE WOMAN; JOHN F. KONARSKI, A SINGLE MAN; FRANK E. KONARSKI, A SINGLE MAN, DBA FGPJ APARTMENTS & DEVELOPMENT,
Plaintiffs-Appellants/Petitioners,
v.
CITY OF TUCSON, A BODY POLITIC; MICHAEL G. RANKIN AND CATALINA O. RANKIN HUSBAND AND WIFE; JULIANNE K. HUGHES AND GRAEME HUGHES, WIFE AND HUSBAND; MARK R. CHRISTENSEN AND NANCY STANLEY, HUSBAND AND WIFE; ALBERT ELIAS AND SARAH STARLING-ELIAS, HUSBAND AND WIFE; SALLY STANG AND MICHAEL STANG, WIFE AND HUSBAND; RICK SHEAR AND JEANETTE SHEAR, HUSBAND AND WIFE; RONALD KOENIG AND ERIN KOENIG, HUSBAND AND WIFE; LISA SWANSON (AKA, LISA HIGGINS) AND WILLIAM HIGGINS, WIFE AND HUSBAND; VANESSA GONZALEZ AND JOHN DOE GONZALEZ, WIFE AND HUSBAND; ARTURO ENCINAS AND JANE DOE ENCINAS, HUSBAND AND WIFE; MARTIN PENA AND JANE DOE PENA, HUSBAND AND WIFE; AND DOES 1-10,
Defendants-Appellees/Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

Ninth Cir. Ct. No. 16-15476
/ Dist. Ct. No. CV 4:14-02264-TUC-JGZ
Judge Jennifer G. Zipps
No. CV 4:14-02264-TUC-JGZ

PETITION FOR WRIT OF CERTIORARI

Frank Konarski
Gabriela Konarski
Patricia Konarski
John F. Konarski
Frank E. Konarski
450 West Dakota Street
Tucson, Arizona 85706-3240
Phone: (520) 746-0564
Petitioners

....

2. In contradicting precedent by disregarding the *per se* interstate commerce identity of Plaintiffs' housing rental business, the Decision *errs* in finding the Commerce Clause Claim is not a plausible legal viability.

a. Background.

While the Sherman Act protects competition *per se*, the Commerce Clause under a 42 U.S.C. § 1983 action, on the other hand, protects the actual participants in the domain of interstate commerce—Plaintiffs' individual interests. *Dennis v. Higgins*, 498 U.S. 439, 446-449 (1990).

b. Case law-conflict exponential error of Decision: failing to properly apply the *Pike* test to the circumstance of *per se* interstate commerce housing rental operations like Plaintiffs' to realize that Defendants' unilateral municipal action violates the Commerce Clause.

The Decision erroneously finds no valid Commerce Clause Claim on this basis, to wit:

> [Plaintiffs] failed to explain how [Defendants'] decision to provide Section 8 [monetary vouchers] to [Plaintiffs'] tenants favored in-state economic interests over out-of-state interests, or incidentally burdened interstate transactions.

Id. at 7 (citing *Kleenwell Biohazard Waste and Gen. Ecology Consultants, Inc. v. Nelson*, 48 F.3d 391, 395 (9th Cir. 1995)). To reach this erroneous finding of law, as before, the Decision violates *stare decisis*, and its citation to *Kleenwell* does nothing to avert this

error. While, in citing to *Kleenwell*, the Decision implicitly refers to some of the factors of the relevant *Pike* test originally found in *Pike v. Bruce Church, Inc.*, 397 U.S. 137,142 (1970), it fails to properly apply the test, as explained below.

First, before the *Pike* test is addressed, preliminarily it must be noted that, yet again, the Decision erroneously fails to acknowledge the legally recognized *per se* interstate commerce identity of Plaintiffs' housing rental business. *See id.* at 6-7. *See also* case law (on interstate commerce recognition), *supra.*

Second, even assuming *arguendo* the Decision does consider the *Pike* test with respect to housing rental businesses' being a *per se* part of interstate commerce, it still falls short: As quoted above, the Decision does not fully apply all the factors of the

Pike test, particularly its legitimacy factor. In relevant part of the *Pike* test, Defendants' unilateral municipal action would need to "effectuate **[i]** a legitimate local public interest, and **[ii]** its effects on interstate commerce [would have to be] only incidental [in order to] be upheld unless the burden imposed on such commerce [would] clearly [be] excessive in relation to the putative local benefits." *Pike*, 397 U.S. at 142 (brackets and emphasis added). These factors, discussed below, make clear the Decision errs in denying the Commerce Clause Claim.

(i) Error: failing to realize no legitimate interest.

In violating the standard of needing to consider Plaintiffs' pled facts "as true" and "most favorabl[y] to [them]," *Chubb Custom Ins. Co. v.*

Space Sys., 710 F.3d 946, 956 (9th Cir. 2013), and inherently needing to infer, where possible, "that the [D]efendant[s] [are] liable,'" *Faulkner v. ADT Sec. Servs.*, 706 F.3d 1017, 1019 (9th Cir. 2013) (citation omitted), and being misled by Defendants—the Decision improperly cleanses Defendants' offending unilateral municipal action free of its illegitimacy: In improperly infusing legitimacy in "provid[ing] Section 8 [monetary vouchers] to [Plaintiffs'] tenants," *id.* at 7, *inter alia*, the Decision omits Defendants' said action's pled illegitimate/bad-faith characteristic (Compl. ([5]ER 845 para. 29)) shown in various ways—shown in its *forcing* tenants like Tenants Dye to go to other landlords with such vouchers ([5]ER 842-845 paras.20-28) *irrespective* of the fact that such vouchers could be applied toward continued tenancy at Plaintiffs' housing units since

Plaintiffs have been *qualified* to maintain voucher-based tenancies ([5]ER 848 para. 41); shown in its knowingly *defying* the state public policy statute that disapproves interference with commerce transactions ([5]ER 858 para. 66; 874 para. 114); shown in its knowingly *defying* cease-and-desist notices to stop commerce interference (*see, e.g.*, [5]ER 841 para. 18; 854 paras. 50-51); shown in its scheme of intentionally *delaying* Plaintiffs' response to the interference so that the full effect of the then-latest tenancy interference could take place ([5]ER 847-848 paras. 38-39); and shown in its being fueled by the said program's "'personal vendetta'" governance and intention to run Plaintiffs out of business ([5]ER 845 para. 27-30).

While "[s]pecific facts are not necessary," *Erickson v. Pardus*, 551 U.S. 89, 93 (2007), the

Complaint plausibly pleads the illegitimacy of Defendants' said action, which the Decision disregards. Given that Defendants' said action cannot surpass the legitimacy factor of the *Pike* test, it is unlawful. *See Pike*, 397 U.S. at 142.

(ii) Error: alternatively, failing to realize excessive commerce burden (and lesser-impact alternative).

Even assuming *arguendo* that Defendants' unilateral municipal action could be wholly legitimate, it is invalid because of its nature of causing excessive burdens—knowingly and inherently causing interferences with and losses of *per se* interstate commerce housing rental transactions without limitation to any *per se* interstate housing rental business under the thumb of Defendants. *See* [5]ER 842-845 paras.20-28.

The Decision fails to appreciate how the supposedly legitimate interest of Defendants' said action "**could be promoted...with a lesser impact on interest activities.**" *Pike*, 397 U.S. at 142 (emphasis added). One lesser-impact example: requiring Defendants' said municipal action to observe (and discontinue interference with) the natural duration of existing *per se* interstate commerce housing rental transactions and—only after the natural expiration of such transactions—issue monetary vouchers to tenants that Defendants desire such tenants to use elsewhere. This observance would also put Defendants' said action in line with state public policy that prohibits commerce interference. *See* [5]ER 858 para. 66. Defendants' said action violates the Commerce Clause because it eschews this lesser-impact alternative. *Pike*, 397

U.S. at 142.

....

RESPECTFULLY submitted this 26th day of May 2018.

/s/ Frank Konarski

/s/ Gabriela Konarski

/s/ Patricia Konarski

/s/ John F. Konarski

/s/ Frank E. Konarski
Plaintiffs

.....

APPENDIX B

No. 16-15476

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
NINTH CIRCUIT

FRANK KONARSKI AND GABRIELA KONARSKI, HUSBAND AND WIFE; PATRICIA KONARSKI, A SINGLE WOMAN; JOHN F. KONARSKI, A SINGLE MAN; FRANK E. KONARSKI, A SINGLE MAN, DBA FGPJ APARTMENTS & DEVELOPMENT,
Plaintiffs-Appellants,
v.
CITY OF TUCSON, A BODY POLITIC; MICHAEL G. RANKIN AND CATALINA O. RANKIN HUSBAND AND WIFE; JULIANNE K. HUGHES AND GRAEME HUGHES, WIFE AND HUSBAND; MARK R. CHRISTENSEN AND NANCY STANLEY, HUSBAND AND WIFE; ALBERT ELIAS AND SARAH STARLING-ELIAS, HUSBAND AND WIFE; SALLY STANG AND MICHAEL STANG, WIFE AND HUSBAND; RICK SHEAR AND JEANETTE SHEAR, HUSBAND AND WIFE; RONALD KOENIG AND ERIN KOENIG, HUSBAND AND WIFE; LISA SWANSON (AKA, LISA HIGGINS) AND WILLIAM HIGGINS, WIFE AND HUSBAND; VANESSA GONZALEZ AND JOHN DOE GONZALEZ, WIFE AND HUSBAND; ARTURO ENCINAS AND JANE DOE ENCINAS, HUSBAND AND WIFE; MARTIN PENA AND JANE DOE PENA, HUSBAND AND WIFE; AND DOES 1-10,
Defendants-Appellees.

On Appeal From the United States District Court
for the District of Arizona
Judge Jennifer G. Zipps
No. CV 4:14-02264-TUC-JGZ

PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING AND REHEARING *EN BANC*

Frank Konarski
Gabriela Konarski
Patricia Konarski
John F. Konarski
Frank E. Konarski
450 West Dakota Street
Tucson, Arizona 85706-3240
Phone: (520) 746-0564
Plaintiffs-Appellants

....

2. In contradicting precedent by disregarding the *per se* interstate commerce identity of Plaintiffs' housing rental business, the Decision *errs* in denying the Commerce Clause Claim.

a. Background.

While the Sherman Act protects competition *per se*, the Commerce Clause under a 42 U.S.C. § 1983 action, on the other hand, protects the actual participants in the domain of interstate commerce—Plaintiffs' individual interests. *Dennis v. Higgins*, 498 U.S. 439,446-449 (1990).

b. Decision's exponential error: failing to properly apply the *Pike* test to the circumstance of *per se* interstate commerce housing rental operations like Plaintiffs' to realize that Defendants' unilateral municipal action violates the Commerce Clause.

The Decision erroneously finds no valid Commerce Clause Claim on this basis, to wit:

> [Plaintiffs] failed to explain how [Defendants'] decision to provide Section 8 [monetary vouchers] to [Plaintiffs'] tenants favored in-state economic interests over out-of-state interests, or incidentally burdened interstate transactions.

Id. at 7. This is erroneous. While the Decision implicitly refers to some of the factors of the relevant *Pike* test originally found in *Pike v. Bruce Church, Inc.*,397 U.S. 137,142 (1970), it fails to properly apply the test, as explained below.

First, before the *Pike* test is addressed, again,

the Decision erroneously fails to acknowledge the *per se* interstate commerce identity of Plaintiffs' housing rental business. *See id.* at 6-7.

Second, even assuming *arguendo* the Decision does consider the *Pike* test with respect to housing rental businesses' being a *per se* part of interstate commerce, it still falls short: The Decision does not apply all the factors of the *Pike* test, particularly its legitimacy factor. In relevant part of the *Pike* test, Defendants' unilateral municipal action would need to "effectuate **[i]** a legitimate local public interest, and **[ii]** its effects on interstate commerce [would have to be] only incidental [in order to] be upheld unless the burden imposed on such commerce [would] clearly [be] excessive in relation to the putative local benefits." *Pike*, 397 U.S. at 142 (brackets and emphasis added). These factors,

discussed below, make clear the Decision errs in denying the Commerce Clause Claim.

(i) Error: failing to realize no legitimate interest.

In violating the standard of needing to consider Plaintiffs' pled facts "as true" and "most favorabl[y] to [them]," *Chubb Custom Ins. Co. v. Space Sys.*,710 F.3d 946, 956 (9th Cir. 2013)—the Decision improperly cleanses Defendants' offending unilateral municipal action free of its illegitimacy: In improperly infusing legitimacy in "provid[ing] Section 8 [vouchers] to [Plaintiffs'] tenants," *id.* at 7, *inter alia*, the Decision omits Defendants' said action's pled illegitimate/bad-faith characteristic (Compl.([5]ER 845 para. 29)) shown in various ways—shown in its *forcing* tenants like Tenants Dye to patronize other landlords with such vouchers

([5]ER 842-845 paras.20-28) *irrespective* of the fact that such vouchers could be applied toward continued tenancy at Plaintiffs' housing units given Plaintiffs' demonstrated qualification ([5]ER 848 para. 41); shown in its knowingly *defying* the state policy statute that disapproves commerce interference ([5]ER 858 para. 66; 874 para. 114); shown in its knowingly *defying* cease-and-desist notices to stop commerce interference (*see, e.g.*, [5]ER 841 para.18; 854 paras. 50-51); shown in its scheme of intentionally *delaying* Plaintiffs' response to the interference ([5]ER 847-848 paras.38-39); and shown in its being fueled by the said program's "'personal vendetta'" governance ([5]ER 845 para.27-30).

While "[s]pecific facts are not necessary," *Erickson v. Pardus*, 551 U.S. 89, 93 (2007), the Complaint plausibly pleads the illegitimacy of

Defendants' said action, which the Decision disregards. Unable to surpass the legitimacy factor of the *Pike* test, Defendants' said action is unlawful. *Pike*, 397 U.S. at 142.

(ii) Error: failing to realize excessive commerce burden (and lesser-impact alternative).

Even assuming *arguendo* that Defendants' unilateral municipal action could be wholly legitimate, it is invalid because of its ability to cause excessive burdens—cause interferences with and losses of *per se* interstate commerce housing rental transactions to any *per se* interstate housing rental business. [5]ER 842-845 paras.20-28.

The Decision fails to appreciate how the supposedly legitimate interest of Defendants' said action "could be promoted...with a lesser impact on

interest activities." *Pike*, 397 U.S. at 142 (emphasis added). One lesser-impact example: requiring Defendants' said municipal action to observe (and discontinue interference with) the natural duration of existing *per se* interstate commerce housing rental transactions and—only after the natural expiration of such transactions—issue monetary vouchers to tenants that Defendants desire such tenants to use elsewhere. This observance would also make Defendants' said action compliant with state policy that prohibits interference. *See* [5]ER 858 para. 66. Defendants' said action violates the Commerce Clause because it eschews this lesser-impact alternative. *Pike*, 397 U.S. at 142.

....

RESPECTFULLY submitted this 29th day of January 2018.

/s/ Frank Konarski

/s/ Gabriela Konarski

/s/ Patricia Konarski

/s/ John F. Konarski

/s/ Frank E. Konarski
Plaintiffs

.....

APPENDIX C

Frank Konarski, et al.
FGPJ APARTMENTS
FGPJ DEVELOPMENT
450 West Dakota Street
Tucson, Arizona 85706-3240

VIA FIRST CLASS MAIL AND E-MAIL
(jstuehringer@waterfallattorneys.com)

Mr. James W. Stuehringer, Esq.
WATERFALL, ECONOMIDIS, CALDWELL,
HANSHAW & VILLAMAN, P.C.
5210 E. Williams Circle, Suite 800
Tucson, AZ 85711
Phone: (520) 745-7807

June 20, 2018

Re: Your June 19, 2018 Letter of an Unfounded, False Accusation
Ninth Circuit Court of Appeals,
Case No. 17-16751

Dear Mr. Stuehringer:

Your e-mailed letter of June 19, 2018 contains, to say the least, a categorically false accusation about us, and such a falsehood is of an aggravated degree, as set forth below.

Without performing your due diligence, to include the reasonable need to first confer[1] with us—as opposed to your untenably referring to *merely* an online docket (online portals that courts regularly forewarn are not to be relied upon wholeheartedly because they are continuously updated, etc.)—you, in your letter, make the outrageously false accusation that we have falsified our Reply Brief in the above-referenced case by virtue of informing the Ninth Circuit Court of Appeals therein that we "'submitted [our] petition for a writ of certiorari before the U.S. Supreme Court within the permitted timeline, and such, [we] understand, is currently pending.'" Your Ltr. at 1 (quoting Reply Br. at 25). This submission statement of ours is entirely true.

Because U.S. Supreme Court Justice Kennedy denied our motion for an extension to file a petition for a writ of certiorari, and upon consulting a clerk of the U.S. Supreme Court, we submitted our petition for a writ of certiorari, as is, on May 26, 2018—before the applicable deadline of May 27, 2018. And because the submission was submitted by first-class mail, the postage date of that mailing (i.e., May 26th), per the applicable rule, is effectively the timely filing date of the said petition. We realize that, being pro se, the said petition may not be perfect and may require rectification as the clerk of the U.S. Supreme Court deems necessary, but, nonetheless, it was timely submitted as stated in the Reply Brief.

---

[1] You also have, of course, as you know, failed to respond to written correspondence from April 2018 as it relates to the course of litigation.

To substantiate our submission of the said petition—and while we need not have to prove anything to you beyond our mailing certification—attached as Exhibit A is a copy of a receipt we received from the U.S. Post Office for our having paid for first-class mailing of a large envelope that contained copies of the said petition. Such mailing is addressed to the U.S. Supreme Court's designated mailing address: Clerk of the U.S. Supreme Court, 1 First Street, NE, Washington, D.C. 20543. Ex. A: Receipt (detailing the U.S. Supreme Court's dedicated zip code of 20543 for mailing on May 26, 2018). (Separately, because only one copy of the said petition was due to you, it was sent to you via a postage stamp-paid envelope.) Suffice it to say, we have not yet heard back from the U.S. Supreme Court to indicate any action was taken with respect to the said petition. We suspect that once it clears what we assume is the court's mail security protocols, it will be duly acknowledged.

With that said, this latest audacity of yours to outrageously accuse us without performing some semblance of professional due diligence is a part of your ever-increasingly off-the-rails reaction to, it is strongly believed, your having been taken to the State Bar of Arizona by us for your discovered conflicts of interests that you failed to properly address. Because the actions the state bar strives to take with its members are remedial in nature, the findings of state bar complaints are often not publicly released, as you know. With that said, we may ask

the state bar to publicly release its finding with respect to our bar complaint against you because it is increasingly evident that such a finding will enable us, we strongly believe, to properly provide context for your motive in each instance you decide to make an unnecessary disturbance in your bid to paint us in a false light, as you do with your June 19th letter in which you act as a loose cannon by your making the latest false assertion against us that we consider to be retaliatory.[2]

What is furthering aggravating is this: You have effectively demonstrated your misrepresentation of your lack of time to meet a deadline in the ongoing case of *Konarski v. City of Tucson,* Case No. CV 4:11-00612-TUC-LAB (D. Ariz.), *rev'd in part*, 599 Fed. Appx. 652 (9th Cir. 2015) (also referred as "Baltazar Personal Vendetta-Revelation Case"). Specifically, in the said case, you sought an extension of your June 19, 2018 deadline by which to file for reconsideration of the denial of your pursuit of your client's—second (2nd)—attempt

---

[2] The adjective of "reckless" would not be accurate to describe the degree of your June 19th untenable conduct; such an adjective would actually be an understatement under the circumstances. In fact, to merely label your untenable conduct as reckless would be to deny the circumstances that make such a transgression of yours intentionally harmful, particularly in consideration of, *inter alia*, the circumstance in which no reasonable attorney would have made the same transgression you made, the nature of your multi-faceted unprofessional demeanor towards us, and your history of engaging in misrepresentations and other disrespectful and even threatening acts towards us and a witness in a case, etc.

at summarily dismissing our Fourteenth Amendment equal protection claim. To the assigned judge, Judge Leslie Bowman, you avowed to her that you and your appeared co-counsel, Cassandra Meynard, both did not have time to meet the June 19th deadline because of a vague workload conflict (again)—and yet you have demonstrated you had more than enough time to concoct the instant falsification and develop it into a spiel of two (2) pages that is your letter of June 19th, the same day of the deadline you sought to extend, of all days. You can be assured, Mr. Stuehringer, that Judge Bowman will be informed of your misrepresentation of your and your co-counsel's lack of time, and, inherently, your audacity to squander the time you avowed you and your co-counsel 'did not' have to unnecessarily smear an opponent in your 2-page June 19th letter. In this vein, your menacing words found in the conclusion of your June 19th letter are actually justified to be directed to you: Judge Bowman "will take whatever action [she] deems appropriate" with respect to your latest misrepresentation.

Your latest transgression is of no surprise. You have engaged in a history of acts that others and we find make you unbecoming of a lawyer in good standing with the applicable rules and regulations. We have found that you routinely misrepresent circumstances, to put it mildly, and have been known to attempt to intimidate, threaten and disparage individuals in your endless quest to score advantages over others at all costs, all while trying to carefully shield such an unhealthy approach from the judges

before whom you appear. In the Baltazar Personal Vendetta-Revelation Case, you will recall that while you deposed Ms. Bonita Baltazar—a star whistleblower witness who revealed her receipt of an admission from your government client of personal vendetta-driven governance towards us—you engaged in a provocative exchange with her that could easily be conveyed as your attempt to disparage her and threaten her with "'prison'" time in the course of her refusal to succumb to your apparent desire that she recant the truth of her receipt of the revealed admission of public corruption. Pls.' Resp. in Opp'n to Defs.' Second MSJ (Doc. 226) at 7 (quoting PCSOF's reference to deposition transcript), *Konarski*, Case No. CV 4:11-00612-TUC-LAB (D. Ariz.). You were also previously given an express cease-and-desist warning from attorney Kenneth Schutt after you had a male representative with a gun trespass onto our private properties in an apparent attempt to locate and intimidate Ms. Baltazar. Pls.' Reply Regarding Notice of Objection to Defs.' Notice of Dep. Of Baltazar, Ex. 1 (Doc. 121-1): 11/17/15 Schutt Ltr. to Stuehringer (recounting armed trespassing incident and warning). It is no wonder other attorneys in the legal community, like attorney David Lipartito and attorney Richard Lougee (who do not represent us), it is understood, have also previously have made complaints against you.

It would be in your best interests that you immediately recall your outlandishly absurd and false letter of June 19th. Your permitting the Ninth

Circuit Court of Appeals to be left in the dark with your latest false impression is a disservice to the court. You should also genuinely apologize for your unhinged outburst, but given the nature of your character, we realize you will not do so. Hypocritically, in the Baltazar Personal Vendetta-Revelation Case, in the last instance in which you were called out for incontrovertibly failing to mail a copy of your court filing to us, in defiance of your mail certification (to include e-mail service per an earlier agreement to deter your future postal mail failures) and applicable rules, you responded by providing a copy of the subject filing and an absurd and disingenuous remark: The belated service came with the remark that "'**[o]n the off chance** that [you] did not mail or email Defendants' response....'" Pls.' Reply in Supp. of Mot. for Sanctions for Srvc. Failure (Doc. 279) at 3 (emphasis added) (quoting 5/2/2018 Defs. Counsel e-mail), *Konarski*, Case No. CV 4:11-00612-TUC-LAB (D. Ariz.).

Also, stop making threats, and stop having others on your behalf making threats, to us. We believe these are criminal acts.

In fact, all of your transgressions must stop. You should not have to be reminded that, particularly as an attorney, you are held to minimum standards of due diligence and conduct towards the courts and those with whom you interact. You are unnecessarily burdening the appellate court that is already consumed with cases, and not helping yourself (let alone your clients), in your defying such

minimum standards.

Sincerely,

/s/ Frank Konarski

/s/ Gabriela Konarski

/s/ Patricia Konarski

/s/ John F. Konarski

/s/ Frank E. Konarski

Encl.: Ex. A: U.S. Postal Receipt

APPENDIX D

SCHUTT LAW FIRM, P.L.C.
9375 E. Shea Blvd., Suite 100
Scottsdale, Arizona 85260

*Kenneth W. Schutt, Jr.** *Telephone (480) 225-7777*

**Also Admitted in Nebraska and Colorado* *Facsimile(480) 779-1345*
E-Mail kenschutt@cox.net

October 28, 2015

VIA E-MAIL
(jstuehringer@waterfallattorneys.com)

Mr. James W. Stuehringer
Waterfall, Economidis, Caldwell, Hanshaw and Villamana P. C.
5210 E. Williams Circle, Suite 800
Tucson, AZ 85711
Phone: (520) 745-7807

RE: Case No. 4:11-cv-00612-LAB , *Frank Konarski, et al. v. City of Tucson, et al.*
Notice: Cease and Desist Your Harassment and Intimidation Tactics

Dear Mr. Stuehringer:

I write this letter to you with great concern and alarm about the troubling manner in which you have apparently decided to handle this matter. And, in

this vein, I formally demand that you and your clients, Defendants in the above-referenced case, cease and desist from both harassing and intimidating my clients, Plaintiffs, and their tenants and apparently attempting to harass and intimidate one of their former tenants and a main witness of the above-referenced case, Ms. Bonita Baltazar. Over the course of some time, in fact, my clients have come to experience an ever-increasing amount of incidents of harassment and attempted intimidation by representatives of your clients.

The most recent offending incident occurred today, October 28, 2015, with particular aggression: At around 9:15 a.m., a male individual (white, approximately 5'11, buzz cut, black shirt, jeans), later identified as Harry Goss—armed with a handgun and other objects around his waist—was found trespassing on the private properties of my clients. (The private properties are clearly designated as private properties with posted do-not-trespass private property signs.)

Without any legal authority, Mr. Goss trespassed onto my clients' private properties and apparently attempted to go door to door of my clients' private residences. In fact, as it so happened, Mr. Goss knocked on the door of one of the housing units that some of my clients were in at the time, 517 W. Dakota St., Tucson, AZ 85706. When this strange individual was asked what he needed (on the private property of my clients), he flashed his Tucson Police Department badge in a bid to inappropriately

establish some sort of an official authoritative presence as a former Tucson Police Department officer. Along with doing that, he provided his business card in claiming he was also a private investigator, a copy of which is attached hereto as Exhibit A. He also displayed the picture of Ms. Baltazar that was previously disclosed to you in court documents, stating that he was looking for her, apparently on your behalf. Ms. Baltazar never lived at 517 W. Dakota St., so there was no reason to be there (and at the other housing units of my clients) other than for the inappropriate intention to harass and intimidate my clients' existing tenants, including the tenants whom he thought would be at 517 W. Dakota St., but who turned out to be my clients there at that time.

Of all people, you very well know, in fact, that Ms. Baltazar was forced to move out of my clients' housing unit, located at 519 W. Dakota St., Tucson, AZ 85706, against her will thanks to the tortious, personal vendetta-motivated actions of your individual clients back in 2010. A such, Ms. Baltazar has not been a resident of my clients for over five years—over a half a decade—so there was no imaginable reason to have a gun-toting representative of yours at all wandering about my clients' private properties other than to harass and intimidate my clients and their tenants. Even if Ms. Baltazar were still a tenant of my clients, today's fear-mongering stunt was well outside the appropriate protocol of getting a hold of Ms. Baltazar.

Mr. Goss was given a verbal do-not-trespass notice as he took off with his handgun in a private vehicle, refusing to wait for my clients to call the Pima County Sheriff's Office.

I had no prior knowledge that you would be sending an individual, much less a strange guy with a handgun illegally impersonating a police officer, to wander about my clients' private properties, let alone did you have my consent to do so.

Should there have been any need to be on my clients' private properties, an appointment request should have been made to me for my and my clients' consideration. In fact, in general, people normally make appointments before showing up at someone's private property, and anything short of that is unwelcomed. Furthermore, your apparent attempt to slyly intimidate Ms. Baltazar, and existing tenants of my clients for that matter, with a gun-toting individual is unconscionable.

I am very disappointed and alarmed by your tactics.

This is harassment and attempted intimidation of my clients and their existing tenants, and, what is more, witness intimidation of Ms. Baltazar.

It must stop.

You and your representatives are not free to roam around my clients' private rental properties without

permission, and certainly not in a threatening manner with a displayed handgun to incite fear and apprehension among my clients and their residents. To do so not only jeopardizes the judicial process, but is a serious interference with interstate commerce.

If you continue to act, or continue to cause another person to act on your behalf, in such a manner, I will take legal action against you and your representatives for monetary and equitable relief, including, but not limited to, what is afforded under A.R.S. § 12-1801, *et seq.*

Thank you.

Respectfully,

/s/ Kenneth W. Schutt, Jr.

Encls.: Ex. A: Business Card
cc: Clients